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C O N F I D E N T I A L SECTION 01 OF 03 PHNOM PENH 000765

SIPDIS

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USUN FOR M. SIMONOFF

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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [PHUM](#) [CB](#)

SUBJECT: FRIENDS OF THE ECCC DISCUSS STAFFING CHALLENGES,
BUDGET, AND THE WAY FORWARD

REF: A. PHNOM PENH

[1](#)B. PHNOM PENH 316

Classified By: AMBASSADOR CAROL A. RODLEY FOR REASONS 1.4 (B, D)

[1](#)1. (C) SUMMARY: The "Friends of the Extraordinary Chambers in the Courts of Cambodia (ECCC)" met October 7 to discuss the judicial and administrative progress and challenges of the court. The judicial proceedings were reported to be running smoothly, with the substantive portion of the first trial in Case 1 against Kaing Guek Eav (Duch) complete and preparations for closing statements well underway. The success of recent Public Affairs outreach activities and strong public participation in the proceedings were highlighted, along with the appointment of an independent counselor. The DCM pointed out that the appointment is only a first step, and inquired about staff awareness of the procedures for handling allegations of corruption in the court. The Friends Group, which includes donors and the United Nations (UN) and Cambodian administrators, discussed the importance of Pre-Trial Chamber (PTC) permanence to handle the appeals that have already started in case 2. Suggesting that there will be "massive political consequences" if the PTC issue is not addressed expediently, the UN's Knut Rosandhaug expressed frustration at what has become a political rather than an administrative decision. Rosandhaug also presented a budget timeline which sets the conclusion of donor support for the Khmer Rouge Tribunal at [1](#)2015. END SUMMARY.

Achievements

[1](#)2. (C) Japanese Ambassador Masafumi Kuroki opened the 14th meeting of the Friends of the ECCC by noting several accomplishments of the court since the last meeting in May (Ref B), specifically the agreement between the Royal Government of Cambodia (RGC) and the UN to create an independent counselor position for corruption issues at the court (Ref A). The DCM added that the appointment of Uth Chhorn as the independent counselor is only a first step in the resolution of the corruption issue, and noted that more needs to be done to describe and communicate the procedures and processes involved in handling allegations of corruption at the court. The British and Spanish agreed with the DCM's suggestion that a fundamental framework of the position and related activities need to be presented to all employees as well as to donors.

13. (C) Acting ECCC Director of Administration, Tony Kranh, admitted that it had been a challenging three years to get to the point where the court now stands, which is at the conclusion of the substantive portion of the first trial. He underscored the importance of trial closing statements which are scheduled for November 23, estimated to take three days followed by a 2-3 month recess, with a verdict in February or March, 2010. Deputy Director of Administration Knut Rosandhaug expressed frustration that donors continue to underestimate the positive and instead "harp on the budget." He categorized the public outreach campaign with over 27,000 visitors at the court, full-time TV coverage, analytical programs and more as a "mammoth success which has legitimized debate on the Khmer Rouge."

Personnel Concerns

14. (C) Tony Kranh advocated for PTC permanence to handle the appeals which he indicated had already begun would for case 12. Kranh argued that the budget implications would be negligible, citing increased speed and efficiency which would result in an overall shortened lifetime of the court. Rosandhaug stressed the urgency of this issue given the reliance of the co-investigating judges and trial chamber on the PTC. Currently, it takes the PTC approximately 6 months to produce a decision on a single appeal. Rosandhaug stated that if this slow pace continues, the co-investigating judges will not be able to conclude investigations by September,

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2010 which would mean the three suspects in pre-trial detention would have to be freed according to the law. That, clearly, is the defense lawyers' strategy. Predicting "massive political consequences" if the PTC was not made permanent now, Rosandhaug expressed his frustration that this has turned from an administrative decision to a political decision. He has stressed the importance to the UN and has filed a three-page memo, yet there has been no response. His understanding is that the UN headquarters asked for advice from the Steering Committee and is waiting on a response and guidance.

15. (C) The donors suggested the UN announce the change to the Steering Committee, supported by the ample justification that has already been provided for that purpose, and preview the decision privately and quietly to the two sitting international PTC judges. According to Rosandhaug, a Dutch judge had indicated she will not be available fulltime as she is not willing to leave her job in The Hague. The second international judge (an Australian) may agree if the terms and conditions are to his liking. Although the Australian Ambassador questioned the perceived lack of judges' salary equitability with their international brethren at other tribunals, all others (including the Japanese) appeared to be seized with the fact that any notion of efficiency and expediency would disappear by maintaining the current part-time system. Indicating that the judges need to be sitting permanently by February, the donors suggested recruitment start now.

16. (C) The French Ambassador expressed concern that the RGC had not selected an international co-prosecutor, and stated that it is important to public perceptions and the good reputation of the court to have the permanent international co-prosecutor provide closing statements in November rather than someone in a deputy or acting role. Kranh indicated that this would not be possible, given the administrative details involved in posting someone to Cambodia from overseas, which he estimated would take 3-6 months. Rosandhaug added that the UN Secretary General had nominated a co-prosecutor and a reserve and submitted the letter to the Cambodian Permrep on August 8, however the letter was lost in transit between New York and Cambodia. The RGC will not act

on it until it receives an official, original letter and both the UN and Cambodian sides agreed to follow up on this embarrassing reality.

¶17. (C) In response to the French Ambassador's query about where the RGC stands on the proposal to appoint a Special Adviser to all international criminal tribunals (including the ECCC), Kranh stated that there have been internal discussions but no official decision has been made on the RGC position. He reminded the group that the Prime Minister had rejected the role of a Special Advisor in the past, but now that the concept of the position has changed to encompass all tribunals, it is being considered in a new light. Both Administrators said they expect a decision by the end of October.

Civil Parties

¶18. (C) Both the Cambodian and UN administrators vehemently rejected recent criticism in the media of the court's treatment of civil parties. Rosandhaug stated that the ECCC has granted the most rights to civil parties ever in history, which should be a "source of pride not criticism." There were 94 civil parties in Case 1 which allowed for personal representations. However, there are more than 3000 civil parties in case 2, which requires a change in organization in order to be effective. Rosandhaug stated that the rights of the victims will not be diminished, but the way they exercise those rights will have to change. The September Plenary Session of ECCC judges decided in principle to appoint lead co-lawyers supported by civil party lawyers, but the sub-committee, due to meet in December, will decide on these respective roles. The budget for the civil party lawyers will be paid by the court.

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Budget Timeline Thru 2015

¶19. (C) Rosandhaug presented a budget timeline to the Friends which had the prior approval of all ECCC offices, notably the judicial offices. The trial portion of Case 2 is expected to start in early 2011 and last for 1.5 years. According to the timeline, the judicial investigation of Case 3 will start in 2010, followed by the pre-trial appeal in 2012, the trial in mid-2012 thru mid-2014, and appeals lasting until 2015.

¶10. (C) The international side of the court has enough money to continue the current level of operation until the end of 2009, at which point it will have spent approximately \$69 million since the inception of the court. The timeline showed funding requirements peaking in 2010 and 2011, followed by a significant and steady decrease in human and financial requirements through 2015. Next year's peak includes an increase of \$5-6 million from this year for defense, inflation and outreach. Rosandhaug stated that the proposed budget for the international side of the court has been submitted to UN headquarters in New York and he estimated it will be presented to the Steering Committee followed by the group of interested states in November. (Note: Rosandhaug was not authorized to release the projected budget at the meeting, however, based on the aforementioned statement of a \$5-6 million increase per year for the next two years, an estimated budget for 2010-2012 would be approximately \$70 million. End note.) A copy of the budget timeline has been faxed to EAP/MLS.

¶11. (C) The UNDP representative then made an official announcement that UNDP has authorization to disperse the remaining funds in its possession to the court, but will conclude its fund management role as soon as the money is dispersed and accounted for. It is estimated that the

release of the funds will carry the national side of the court through the end of 2009. Donor representatives privately commented afterward that a recent letter to the head of UNDP has remained unanswered, and that it was another "internal problem" the UN needed to fix quickly.

¶12. (C) COMMENT: This substantive and fairly positive Friends meeting highlighted the significant achievements of the court while also raising some current challenges. The DCM underscored the urgency and potential for legal and political consequences if the issue of PTC permanence is not addressed in New York -- a point that the majority of other donors echoed. The concerns raised by the Australian Ambassador regarding equitable compensation were considered to be simply personal, and were highlighted by others as such. (Note: In a separate dinner including donors and judges, trial chamber judge Dame Silvia Cartwright noted to the Australian Ambassador that the judges' compensation is adequate. End note.) The participants left with an unstated understanding that a new Pre-Trial Chamber judge would need to be recruited. However, according to Rosandhaug, nothing concerning the court is ever easy, and he does not expect a smooth implementation. END COMMENT.

RODLEY